

State of Florida

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Public Service Commission

June 26, 1996

BY FEDERAL EXPRESS

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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JUN 27 1996

FEDERAL ROOM

DOCKET FILE COPY ORIGINAL

Re: Notice of Proposed Rulemaking - Implementation of the Pay Telephone
Provisions of the Telecommunications Act of 1996 - CC Docket No. 96-128

Dear Mr. Caton:

Enclosed are the original and fifteen copies of the Florida Public Service Commission's comments in the above docket. Please date-stamp one copy and return it in the enclosed self-addressed stamped envelope. We are also enclosing the electronic version on disk. We are also submitting two additional copies to the Common Carrier Bureau.

Sincerely,

A handwritten signature in cursive script, reading "Cynthia B. Miller".

Cynthia B. Miller
Associate General Counsel

CBM/jb
Enclosure

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Enforcement Division
Room 6008
2025 M Street NW
Washington, D.C. 20554

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:)

Notice of Proposed Rulemaking)

Implementation of the Pay Telephone
Provisions of the Telecommunications
Act of 1996)

CC Docket No. 96-128

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SUMMARY

The Florida Public Service Commission endorses a fourth option for compensation for payphone service providers. This would be to set a nationwide cap, but provide an expressly-stated mechanism for state commissions to petition for a variance to that cap.

In addition, the FPSC agrees with the FCC on a "carrier-pays" method rather than a set use fee.

The FPSC also agrees with the FCC tentative conclusion that payphones should be reclassified as CPE.

**BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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COMMENTS OF THE FLORIDA PUBLIC SERVICE COMMISSION

On June 6, 1996, the Federal Communications Commission (FCC) issued its Notice of Proposed Rulemaking (NPRM) requesting comments on the subject of the appropriate regulatory policies and rules to implement payphone provisions of the Telecommunications Act of 1996 (Act). The Florida Public Service Commission (FPSC) is pleased to provide comments on these issues. We have organized our comments to follow, as closely as possible, the structure and paragraph numbering of the NPRM.

A. COMPENSATION FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED BY PAYPHONES

a. Scope of Payphone Calls Covered by this Rulemaking

Section 276(b)(1)(A) directs the FCC to establish a compensation mechanism to ensure "that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call" from their payphones. The FCC has tentatively concluded that payphone service providers (PSPs) should not receive per-call compensation for 0+ calls because competition in this area ensures "fair" compensation. The FPSC agrees with

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this conclusion. The PSPs are compensated (i.e. receive commissions) for this 0+ traffic through contractual arrangements with IXCs. (§ 16)

The FPSC also agrees that the Act requires the FCC to establish a compensation mechanism for all access code calls, subscriber 800/888 calls, and debit card calls. The FPSC supports the establishment of a per-call dial-around compensation mechanism and has opened dockets to address the issue at the intrastate level.

Additionally, the FPSC believes PSPs should be compensated for international calls. Although the Act does not expressly address international calls, there are costs incurred by the PSPs in originating international calls (similar to the cost of originating an intrastate or interstate call). Therefore, we would agree that international dial-around calls should be subject to compensation. (§ 17 & 18)

With regard to ensuring fair compensation for local sent-paid calls, the FCC has offered three options:

- 1) set a nationwide local coin rate for all calls originated from payphones,

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2) establish specific national guidelines that the states would use to establish a local rate that would ensure that all PSPs are fairly compensated or,

3) defer to the states to continue to set the local coin rates for local payphone calls according to factors within their discretion.

We support a fourth option. We believe that a nationwide sent-paid local coin maximum rate or cap should be established with an expressly stated mechanism so that a state may petition for a variance from the nationwide cap. With the variation in what is paid for underlying services, it is conceivable that the nationwide sent-paid local calling rate cap may not be appropriate for all states in all circumstances.

Furthermore, as noted in ¶ 22, the states have a significant interest in setting local coin rates paid by end-users, because payphones are used by some residents as a substitute for local telephone service. In addition, they are used by visitors and retail customers. Therefore, once a nationwide calling maximum rate cap is established, an individual state should be able to evaluate its situation and determine if the nationwide cap is appropriate based on localized issues. This should ease some of

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the concerns in Chairman Hundt's separate statement attached to the NPRM regarding "areas of clear local concern."

For intraLATA 0+ toll calls, commissions from the presubscribed carrier should ensure fair compensation; therefore we see no need for the FCC to set compensation rates for these calls. (¶ 20-22)

b. Entities Required to Pay Compensation

The FPSC supports a "carrier-pays" compensation proposal that builds on existing procedures. IXCs which receive "dial-around" calls from a payphone would be required to pay the per-call charge. By using a "carrier-pays" approach the IXC may aggregate its payments to the PSPs and incur lower transactions costs (compared to the "set-use fee" system). We are opposed to any mechanism that would require a customer to deposit coins before placing a call. Further, we believe one method of compensation should be adopted and applied to all "dial-around" calls. (¶ 25-28)

B. RECLASSIFICATION OF INCUMBENT LEC-OWNED PAYPHONES

a. Classification of LEC Payphones as CPE

The FCC has tentatively concluded that incumbent LEC payphones should be reclassified as CPE. We support this conclusion since needed functionalities may be provided either through the set or the network; additionally, the CPE

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classification will assist in ensuring that payphone service is not subsidized. The FPSC believes that the FCC should consider making a distinction between small and large LECs on this matter. LECs with fewer than 100,000 access lines should be given the option of continuing to treat their payphones as part of their network service or reclassifying payphones as CPE. LECs with fewer than 100,000 access lines are likely to own relatively few payphones, and the FPSC believes that the administrative burden of separating costs related to the small LEC's payphone operation would outweigh the benefits to be received from reclassifying payphones as CPE. The FPSC believes that fewer than 100,000 access lines is an appropriate classification of a small LEC, since Section 3(a)(47)(C) of the Telecommunications Act of 1996 defines a rural telephone company as any local exchange carrier providing telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines. The Act authorizes different treatment of small and large companies in a number of provisions. It is clearly the intent and spirit of the Act that small companies be held to less stringent requirements in certain areas, if circumstances warrant differential treatment.

Further, the FCC tentatively concluded that incumbent LECs should be required to provide PSPs, on a nondiscriminatory tariffed

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basis, all functionalities used in the LEC's delivery of payphone services. Central office based coin services and functions should be made available to competing payphone providers as requested. This approach is already being taken in Florida.¹ Additionally, rates for services and functions should apply equally to LEC and non-LEC payphones.

The FPSC agrees with the FCC's tentative conclusion that the classification of payphones as CPE should not be construed to mean that payphones only be provided through a structurally separate affiliate per Computer II. Competition in the payphone industry has existed for well over a decade, and the FPSC sees no need at this juncture to require the LECs to provide payphone service through a structurally separate affiliate. We recommend that the LECs be given the option of whether to provide payphone service through a separate affiliate, similar to the way the LECs have the option on how to offer CPE. (§ 42, 43, 44, 45, 46, 48)

b. Transfer of Payphone Equipment to Unregulated Status

Assets to be transferred should exclude loops and central office features in order to ensure that network elements are available in the same form to incumbent LECs and competing payphone providers. (§ 49)

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1 - By Order No. 24101, issued February 14, 1991, the FPSC required all LECs to file tariffs to offer blocking, screening, and intercept services for private pay telephone providers. Blocking and screening help prevent unauthorized calls from being placed from pay telephones (including international calls).

c. Termination of Access Charge Compensation and Other Subsidies

In keeping with the requirement of the Act to eliminate all intrastate and interstate payphone subsidies, we agree that incumbent LECs must reduce their interstate CCL charges by an amount equal to the interstate allocation of payphone set costs currently recovered through those charges. The companion intrastate allocation is undoubtedly recovered in different ways in different states. For example, in Florida the intrastate allocation is not recovered through any specific rate. Depending upon the recovery method and the associated rate levels, there may or may not be an intrastate payphone subsidy. Consequently, a national mechanism for dealing with the intrastate allocation of payphone set costs and determining/eliminating any intrastate subsidy would not be practical. Nonetheless, it may be appropriate for the FCC to define the distinction between payphone set revenue and network revenue generated from a payphone so as to avoid differing state interpretations. Also, the FCC may want to establish a specific end date by which any intrastate payphone subsidies are to be eliminated, and grant states extensions of time to accommodate reasonable transition plans. We also believe that

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if the LEC elects to implement nonstructural safeguards, specific cost pools and allocators should be used to track the nonregulated investment and expenses associated with payphone operations in order to determine whether payphone operations are being subsidized by or are providing a subsidy to the regulated operations.

(¶ 51,52)

While LECs have not been required to pay the SLC on their payphones, this policy is inconsistent with how private payphones have been treated. In order to treat all payphone providers in a like manner and make further strides towards cost-causative based recovery, the access lines terminating at LEC payphones should also be subject to SLC imputation. (¶ 53)

d. Deregulation of AT&T Payphones

Although the Act does not address AT&T payphones, we agree with the FCC's tentative conclusion that payphones provided by AT&T should be classified as CPE. There is no basis for treating AT&T payphones any differently from LEC payphones. (¶ 56)

D. ABILITY OF BOCs TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTERLATA CARRIER

We believe the BOCs should have the same rights that all other PSPs have to select and contract with interLATA carriers. This is consistent with the goals outlined in Section 276 promoting

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regulatory parity between BOCs and independent payphone providers. To prevent anticompetitive behavior, we agree that the FCC should adopt rules to prevent BOCs from giving more favorable interLATA rates to their own payphone operations than their payphone competitors. In addition, the market appears to be largely self policing, and any anticompetitive behaviors would likely be brought to the attention of the FCC or state regulatory body. (§ 71,72)

E. ABILITY OF PAYPHONE SERVICE PROVIDERS TO NEGOTIATE WITH LOCATION PROVIDERS ON THE PRESUBSCRIBED INTRALATA CARRIER

The FPSC agrees that the FCC should prescribe regulations to allow PSPs to negotiate with the location provider on selecting and contracting with the intraLATA carrier serving the payphone. Additionally, we believe minimum standards are necessary for routing and handling of emergency calls. Our greatest concern is the routing of 0- calls. In Docket No. 930330-TP we found that when an end-user places an 0- call, he seeks assistance from a live operator. Due to the use of 0- for emergency purposes, we ordered (PSC-95-0203-FOF-TP) that 0- traffic should continue to be reserved for the LEC. We believe the FCC should continue to allow 0- traffic to be routed to the LEC. (§ 75)

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G. OTHER ISSUES

1. Dialing Parity

In addition to presubscription through the LEC and having the LEC central office route 1+ and 0+ toll calls, a payphone provider should have the option of programming the set itself to route 1+ and 0+ toll calls to the preferred carrier. (§ 84)

Respectfully submitted,


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Senior Attorney

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